

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 UNITED STATES OF AMERICA,

Case No.: 2:18-cr-00266-APG-EJY

4 Plaintiff

**Order Accepting Report and
Recommendation of Magistrate Judge and
Denying Motion to Dismiss**

5 v.

6 RASHAD CRAIG TANNER,

[ECF Nos. 51, 53 62]

7 Defendant

8 Defendant Rashad Tanner is charged with several counts each of illegally acquiring
9 firearms and being a felon in possession of firearms. ECF No. 54. He moved to dismiss the Felon
10 in Possession of a Firearm charges in this case, arguing that the Indictment did not plead all
11 necessary elements of the crimes as required by *Rehaif v. United States*, 139 S. Ct. 2191, 2200
12 (2019). ECF Nos. 51, 53. While the motion was pending, the grand jury returned a Superseding
13 Indictment adding the language required by *Rehaif*. ECF Nos. 54, 55. Tanner argues the
14 Superseding Indictment still does not adequately allege that he knew he was a member of the
15 category of persons barred from possessing firearms. ECF No. 58. He bases this argument on his
16 belief that his prior felony convictions had been expunged.

17 Magistrate Judge Youchah recommended that I deny the motion. ECF No. 62. Tanner filed
18 an objection to that recommendation. ECF No. 63. I conducted a de novo review of the Report
19 and Recommendation and all related papers as required by Local Rule IB 3-2. Judge Youchah's
20 Report and Recommendation sets forth the proper legal analysis and factual basis for the decision,
21 and I accept and adopt it as my own. I supplement her Report and Recommendation with the
22 following:

23

1 “An indictment must state the essential facts to apprise the defendant of the charges against
2 him so that the defendant may prepare a defense, but the indictment may be construed to include
3 facts necessarily implied by the allegations.” *United States v. Broncheau*, 597 F.2d 1260, 1263
4 (9th Cir. 1979). *See also United States v. Huping Zhou*, 678 F.3d 1110, 1113 (9th Cir. 2012) (“An
5 indictment is sufficient if it contains the elements of the charged crime in adequate detail to inform
6 the defendant of the charge and to enable him to plead double jeopardy.”). The Superseding
7 Indictment is sufficient.

8 Tanner argues the Superseding Indictment does not specifically allege he knew he was in
9 the prohibited class. But it alleges he knew he had been convicted of felonies. ECF No. 54.
10 Whether those felonies were expunged and Tanner’s knowledge or belief about that are factual
11 questions for the jury to resolve at trial. It is apparent from Tanner’s motion and related briefs that
12 Tanner clearly understands this defense: whether his alleged efforts to expunge his felonies negate
13 the knowledge that he was in a prohibited class. *See* ECF No. 53 at 2 (“In 2016, Tanner worked to
14 have his criminal record expunged. . . . Tanner believed his criminal record [was] erased. He
15 believed he could legally purchase firearms.”). The Superseding Indictment includes sufficient
16 allegations to apprise him of the charges so he can prepare a defense.

17 I HEREBY ORDER that Magistrate Judge Youchah’s Report and Recommendation (**ECF**
18 **No. 62**), as supplement above, **is accepted and approved**. Defendant Rashad Tanner’s Motion to
19 Dismiss (**ECF No. 51, 53**) is **DENIED**.

20 DATED this 9th day of December, 2019.

21
22 
23 ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE